

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**JAY THOMAS ENCISO,**

**Plaintiff,**

**v.**

**CIV No. 12-0920 LH/SMV**

**CAROLYN W. COLVIN,  
Acting Commissioner of Social Security Administration,**

**Defendant.<sup>1</sup>**

**ORDER ADOPTING MAGISTRATE JUDGE'S PROPOSED  
FINDINGS AND RECOMMENDED DISPOSITION**

THIS MATTER is before the Court on the Magistrate Judge's Proposed Findings and Recommended Disposition [Doc. 49] ("PF&RD"), issued on January 23, 2015. On reference by the Court, [Doc. 36], the Honorable Stephan M. Vidmar, United States Magistrate Judge, recommended granting Plaintiff's Motion for Attorney Fees Under Equal Access to Justice Act [Doc. 45]. No objections were filed, and the time for doing so has passed. Accordingly, the Court will adopt the PF&RD.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that the Magistrate Judge's Proposed Findings and Recommended Disposition [Doc. 49] are **ADOPTED**.

**IT IS FURTHER ORDERED** that Plaintiff's Motion for Attorney Fees Under Equal Access to Justice Act [Doc. 45] is **GRANTED**. Plaintiff is authorized to receive \$7,628.40 for


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<sup>1</sup> On February 14, 2013, Carolyn Colvin became the Acting Commissioner of Social Security and will, therefore, be substituted for Commissioner Michael J. Astrue as Defendant in this action. *See* Fed. R. Civ. P. 25(d)(1) (permitting such substitutions).

payment to his attorneys for services before this Court, as permitted by the Equal Access to Justice Act, 28 U.S.C. § 2412, and in accordance with *Manning v. Astrue*, 510 F.3d 1246, 1255 (10th Cir. 2007).

**IT IS FURTHER ORDERED** that if Plaintiff's counsel is ultimately granted attorney fees pursuant to 42 U.S.C. § 406(b) of the Social Security Act, counsel shall refund the smaller award to Plaintiff pursuant to *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) ("Congress harmonized fees payable by the Government under EAJA with fees payable under § 406(b) out of the claimant's past-due Social Security benefits in this manner: Fee awards may be made under both prescriptions, but the claimant's attorney must refun[d] to the claimant the amount of the smaller fee.") (internal quotation marks omitted).

**IT IS SO ORDERED.**

  
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SENIOR UNITED STATES DISTRICT JUDGE